



NEW POSTSCRIPT

TO

Letter on Libels, &c.



[PRICE ONE SHILLING.]

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* * *The new passages in this Edition are, from the last line but two in page 6, to the end of the second paragraph in page 11. From the second line in page 16, to the end of the same paragraph in the succeeding page. From the beginning of page 18, to the end of the paragraph in page 23. And from the fourth line in page 25, to the end. With some lesser ones in different places.*

2 3
H. ... 9 April. 518.4.19. 3
A
POSTSCRIPT
TO THE
LETTER,
ON
LIBELS, WARRANTS, &c.

IN ANSWER TO A
POSTSCRIPT
IN THE
DEFENCE of the MAJORITY,
AND
Another PAMPHLET, entitled,
CONSIDERATIONS
ON THE
Legality of General Warrants.

THE SECOND EDITION,
CONSIDERABLY ENLARGED.

L O N D O N:
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A

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TO THE

LETTER

OF

LIBERTY, WARRANTS, &c.

IN ANSWER TO A

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IN THE

LIBERTY, WARRANTS, &c.

AND

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CONSIDERED

IN THE

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P O S T S C R I P T.



SHALL here, in very few lines, make some reply to the *Defender* in his Postscript, and to a late *Considerer*, premising that I do not think a statel of facts, from whence a bad character issues, is a calumniator, but an historian; and sincerely hoping (notwithstanding the *Defender's* threat) that no writing of mine will give occasion to the last dying speech and confession of the constitution*, should he and his party have any intention of giving the finishing stroke to it.

I will now ask the *Defender*, whether the star-chamber did not exist before the reign of Henry the 7th, altho' it were little resorted to; and whether, before that time, it was not the King's attorney, or coroner, in the King's Bench (that is the master of the crown office) who filed informations at discretion; and whether, That was not the grievance intended to be redressed by the statute of William the 3d: and, after all, how the nature or oppressiveness of an attorney general's information is at all altered, or affected, by the disputed period of its commencement?

He says, "The nature of libels may differ as much as the complexions of the writers." This I do not comprehend. Individuals of the same species may differ in complexion, but not in nature or kind. A misdemeanor is one distinct kind or

* Defence of the Majority, 2d edit. p. 46, 7.

head of crimes ; libel is a species under it, and the particulars, or individuals of this species, may differ in some features from each other ; but, being all of the same species, or class of crimes, they must partake of the same nature, or kind. They all issue from the same stock, altho' their learning, principles, manners and behaviour, may be different.

I am equally at a loss to understand, how he " maintains that comparison of hands is *no* evidence of hand-writing in a criminal case," and yet insists, that it " has been always admitted there, as circumstantial and corroborative evidence." If it be no evidence, it cannot corroborate or authenticate. *Ex nihilo nil fit.*

He says, he " never met with an instance where " the House of Commons have expounded a " point of law at that time pending in the courts " below, by a mere resolution or declaration, " which might intimidate a judge, or prejudice a " jury in a cause actually before them." I desire him to recollect, whether an information was not pending against Mr. Wilkes for being the author of a libel (the North Briton, No. 45,) when the present House of Commons resolved the said paper to be a libel (which is a nice point of law in the notion of the *Defender* and *Considerer*) and then resolved Mr. Wilkes to be the author of it ; and whether, afterwards the trial of this very information was not had, and Mr. Wilkes found guilty, by a judge and jury ? The influence, however, of the said resolutions upon the judge or jury, I am not aware of.

* The *Considerer* stumbles in the very threshold, for he begins his *considerations* with a misrepresentation

* I must tell the *Considerer*, in answer to his first note ; the common opinion among lawyers has always been, that no judge, in a *criminal* proceeding, ought to know any thing of the record before the trial comes on, unless one of the parties in *open court* move something thereon ; because a Judge is to be

tation of the point in dispute, by supposing the question to be upon *the propriety of a parliamentary regulation of the exercise of General Warrants*; whereas the question is whether the House of Commons cannot with propriety *declare* them to be illegal. An act for regulating the exercise of them must suppose they are legal, the very thing that is denied, and which no man pretending to be a lawyer, before this author, ever affirmed. He says, "I have not produced a single legal authority in support of the illegality of general warrants" and therefore presumes "that no authority whatsoever can be found for this purpose." A sufficient answer to this would be, that the very supposition is drawing into question first principles, which men in a learned profession, among each other, never dream of citing authorities for, such elementary parts of science being only proved by the teachers of Rudiments, or the writers of regular systems, who must both begin *ab ovo*. Nevertheless, let him look again, and he will find Lord C. J. Hale and Serjeant Hawkins cited, and not "the opinion of a present Chief Justice" (justly esteemed of the greatest weight and founded on the most unquestionable principles of law, as it is; and called for, insisted upon, and reluctantly extorted, as it was, by the jury who imagined it necessary to be known for regulating the *quantum* of the damages they should give.) The citation, however, of authorities

be unprejudiced and impartial. The making of an *immaterial* alteration in any chamber would be folly; the making of a *material* one *without consent*, seems to be injustice, seeing it might prevent and remove an objection, fatal after trial, in arrest of judgment. And, what Attorney in his senses would complain to any court against the president in it? I challenge this sophist to produce one *adjudged* precedent of such an alteration. His supposition of there being no difference in legal signification between the words *Tenor* and *Purpose* is grounded in ignorance; the former having been *determined* to import an exact recital, and the other only the general meaning and effect, of any deed or paper. For which reason the first has been held to be sufficient, and the other insufficient, to ground a conviction.

was in me a work of mere supererogation ; because it is a confessed maxim in law, that there must be absolute certainty in all process. Even in *civil* cases this is required, where the name itself is necessary, and any mistake in it is not endured. And yet the injury is not so great to the character of a man to be arrested for a civil as for a *criminal* case, which carries so horrid an imputation with it.

The objection to the warrant so much complained of is, as the *Considerer* truly states it, *on account of the general description of the Offender*. But, if I understand him aright, he himself admits the proposition, by contending in behalf of the warrant in question, that it “ contains a specific description “ of a particular person ; that too, which of all “ others is solely and peculiarly applicable to him, “ the commission of the offence.” For, a *general* description is the reverse of a *specific* one, “ solely “ and peculiarly applicable to one person”, *quod convenit soli, non omni*.

Indeed the fallacy of the *Considerer* is notorious in this place ; for, he first undertakes to prove the legality of *general* warrants, but then reasons upon a warrant *containing a specific description of a particular person, solely and peculiarly applicable to him*, which is to all intents and purposes a special warrant, and comes within the alternative I mention, namely, that every warrant must express *the name or a certain designation of the person*, which last too, by the way, will afford room enough for the apprehension of any *murderer*, and prevent every possible failure of justice.

But, let me ask him, how *the commission of the offence specifies the person* ? Somebody without doubt must commit the offence ; but, how does a description of the offence describe that somebody ? The gentleman has confounded himself between a specific description of the offence and of the offender.

The

The warrant, it is true, contains a particular description of a certain paper, by setting forth its peculiar title, so as to point it out to every body at first sight; but, I will defy the *Considerer* to say that the general denomination of *Author, Printer or Publisher* makes known any one man or individual person whatever. A paper or book has its title printed in the title-page, and it goes every where by that title; but, no man walks about with the title of *Author, Printer or Publisher of the North Briton, N^o 45*, imprinted on his face, nor is that the way of fixing identity in men, this being done by the Christian and Surname, or by a delineation and minute designation of their person and features, &c. such as we see military officers describe their deserters by, or as Sir *John Fielding* uses for highwaymen.

The law, to warrant an apprehension, requires a certainty of the person as well as the crime, they must both be specified in the process, or the execution of it is illegal. It would otherwise be liable, from the generality of the description, to be executed upon wrong people, which the freedom of our constitution will not permit. There is nothing in the countenance of any man (of A more than of B or C) which can determine him to be or not to be the Author, Printer or Publisher of any piece; so that many innocent men would be causelessly harrassed from vain, light surmizes, and idle reports of ignorant, ill-informed or ill-intentioned people, were such general warrants received. Therefore some person in certain must be named, or by notorious and visible marks particularly pointed out.

Would any man of common sense say that Sir *John Fielding* had issued a proper warrant for the seizure of any particular person, if he had granted a warrant for the apprehension of *the highwayman*
who

who robbed Mrs. C. between London and Knightsbridge, at such an hour and such a night, of twenty guineas and her watch? What man could be legally stopped and taken up as within the description and by virtue merely of such a warrant? For, is not every man who has the use of his limbs able to rob? And yet, according to the shrewd *Considerer*, it contains a specific description of a particular person; that too, which of all others is solely and peculiarly applicable to him, the commission of the offence.

It is really absurd to contend that by describing the offence you describe the offender; or that an officer has any certain ground to go upon in the execution of a warrant containing neither name, definition, nor portrait of any individual whatever.

Is it therefore to be wondered that in the case of Mr. Wilkes, under the general warrant then issued, many people were taken up, who were neither Author, Printer or Publisher? For, is not every soul, woman as well as man, capable of publishing a libel? It is in truth so strange and random a way of proceeding, and so productive of injustice, that one would think, after such recent experience, our most exotic apprentices to the law would be sensible of it. They may be assured withall that what is not agreeable to common sense, or is uncertain in itself, can never be rendered either plain or positive by any metaphysical twist in talking or writing about it.

This refined writer, however, seems afterwards to unsay what he had before asserted, by conceding that *he by no means approves of general warrants where special can be of effect*. This surely is contradicting General from Special warrants! wherefore I wish he had either shewn how a *specific* differs from a *special* warrant; or else how a *general* warrant can be specific, in one and the same sense,

The

The same warrant may be certainly specific as to the crime, and yet general as to the person; but, unfortunately for this scribe (who seems to hold *the eel of science by the tail*) the *English* law requires the specification of both.

Furthermore, he is mistaken in supposing I admit General Warrants to be legal in Treason; for, I condemn them expressly in all cases. Indeed, a little reflection must convince any one of the necessity of a contrary doctrine.

A man to be apprehended at all must be guilty of some breach of the law; and this must either happen in the view of the magistrate, or be proved to him by oath, before he can issue a warrant for his arrest. The process must specify both the offence and the offender. For, if this were not so, it would not be the magistrates, but their officers who would adjudge what person should be taken up. Now, the last are merely ministerial and can only execute orders, which therefore must be precise. It is the province of the magistrate alone to judge, and no man can delegate his judicial capacity to another. But, if he grant a discretionary, that is, a general, and not a particular warrant, the officer is left to judge for himself. The law would therefore act vainly in requiring the magistrate to have information on oath (of good cause of suspicion, at least) against a *particular* person, before he issue any order for his caption; if his officer can take up *any* man he shall think fit by virtue of general words and his own discretion. The liberty of every *Englishman* would then be left at the mercy of every impudent Bailiff, Constable, Messenger, or Footman, intrusted with process.

Even in *Hue and Cry*, where *fresh* pursuit is made, the felon must be described, and also the way he is gone.

Let

Let me now suppose that *Leach* had defended himself and his house, and killed the Messenger. Would he, I desire to know, have been guilty of murder; the warrant, that he was apprehended by, naming nobody, and he being no object of it, neither within the letter nor the spirit of it? On the other hand, had the Messenger killed *Leach*; would he not have been clearly guilty of murder?

A power of dispensing with the law and its forms of justice has I know been formerly claimed as a royal prerogative, but not even a *Civilian* I believe (of the most northern extraction) will venture to broach such maxims now. It is indeed profligate nonsense to pretend that what is contrary to the common and statute law of this realm can be legal, let it be commanded by any other power whatever. There is no *law of government* beside or paramount the laws of the land. In the time of Charles the First, upon the imprisonment of the Members, in the fourth year of his reign, Serj^t. *Ashley* (in his argument at the conference between both houses) asserted that *Lex Terræ* meant divers kinds of law, as the Common Law, the Ecclesiastical Law, the Admiralty Law, the Law of Merchants, the Martial Law, and *the Law of State*, and that by this last sort of law Kings could imprison their subjects at their pleasure, without shewing the cause. But this the Serjeant's zeal for slavery offended in those days both the Lords and the Commons, and he was immediately ordered into custody for the unconstitutional doctrine he had advanced. However, upon his humble petition, submission, recognition of his fault (in arguing that a King of *England* could govern by a *law of State*,) and asking pardon on his knees. He was at last discharged.

The hair drawn distinctions made use of to put a difference between Scroggs's and Lord Halifax's
general

general warrants are unworthy any answer, and become only a sophist in his noviciate of logical disputations at College. And, the words *which should thereafter be published* are not in one of the warrants cited by me. A circumstance immaterial in itself, were it not to shew the little trust that one ought to repose in this slippery writer's assertions or quotations.

The best way perhaps of answering a man who *reasons* that the *King's Bench* approve such warrants, because people have been there admitted to Bail under them, is to bring him to the *fact*, that is to the King's Bench itself, and then he will be convinced by his own ears and eyes that the Court never examine the validity of any warrant, unless when called upon so to do.

The *Considerer knows*, it is seldom worth the while of any man who brings a Habeas Corpus, to question the legality of the form of the warrant for his caption, because a regular one would be issued immediately, and he must then be at the expence and trouble of being brought up again by another Habeas Corpus. What council, therefore, would touch upon an objection of form, if he had nothing of substance to urge for his client's discharge? The best thing for him, is to be bailed as soon as possible. The *Considerer knows*, that neither court nor council would officiously act so nugatorily and unkindly. The only Chief Justice of our time, who has had a man before him upon a general warrant (excepting the late case of Mr. Wilkes) is my Lord Mansfield. Dr. Shebbeare was apprehended by such a warrant, and brought before his Lordship; but, he took no notice of the obvious defectiveness of the warrant, and admitted the Doctor to bail under it. And yet, I never met with any man, before the *Considerer*, who either blamed this conduct, or held such

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general

general warrant to be legal. Rumour whispers, that in the case of Mr. Wilkes, the Secretary of State said, "as we know him to be the author, "why not name him;" and that it was a noted Solicitor who prevented this being done, by telling his Lordship "*it was better not.*"

I leave the reader to judge, whether the *Resolution* proposed in Parliament did not spring out of an Inquiry into the conduct of Mr. Webb and Mr. Wood, and then desire he will judge of the Candidness of the *Considerer*, who treats it merely as a spontaneous motion grounded on nothing. He need but read the Votes or Journals *. It is beneath

* Mr. Wilkes's case gave rise to the message and the complaint about privilege, and to a very long inquiry in parliament. From the matter then disclosed, the resolution proposed about general warrants in libel took its rise, and it was framed according to the very words of the warrant that had been actually issued. At the opening of the motion, it was declared, frequently mentioned in the course of the debate, and fully understood by every body, that this resolution was to be followed by another, declaring the execution of such a warrant on a member to be a breach of privilege. (Indeed, that follows of course, for any arrest, that in the case of a common man is illegal, in the case of a member, is a breach of privilege.) In short, the rise, the progress, and the end of the whole was privilege, and yet this is the part which the shrewd *Considerer* particularly slights; because, (I suppose) he knows it proves irrefragably the propriety of the Commons interfering. For my own part, I did not mean to ransack the journals for every resolution apposite to the case in question, nor shall do it now; but, to single out instances of the Houses interposing in all kinds of cases, to shew the general nature and extent of their proceeding. However I will venture to affirm; there are more than 20 independent resolutions, to be met with in the journals, upon points of privilege and of law, unattended with any subsequent impeachment, bill, address, or order. Nay, is it not ridiculous gravely to mention in *Lilburn's* case, *an order to transmit the resolution to the Lords*, as an end which would justify the resolution, or as the cause of its being made: and, in *Sir L. Jenkins's* case, *the ordering those who had given the information into custody*, as what gave a propriety to the resolution, damning the commitment as illegal? Would the resolution condemning general warrants be rendered more salutary, constitutional or effectual, by a subsequent order to transmit it to the Lords, or by ordering *Money, Watson, &c.* into custody, or to ask pardon on their knees, at the bar of the House? The *Considerer* assumes, that the House does not resolve the law upon a general point, *unless when it immediately arises from or tends to some other act of parliamentary proceeding*. Now, apply this to Lord Danby's case. What did the resolution there arise from? A mere complaint of his being groundlessly taken up. What act of parliamentary proceeding did it tend to? A declaration of the illegality of the warrant. What *other* act did it lead to or end in? None at all. The *order*, to ask the Secretary again *when* he received the information, on which the warrant was grounded, can in no sense be called so. It was a part of the same thing. This order too was made the same

beneath any but a Schoolman, to waste time in weaving or destroying such cobweb Arguments and distinctions.

In Contradiction to the Considerer's Assertion, I will affirm, that *the Question of the Legality of the Warrant is not now sub judice, nor in a course of legal determination.* There is no Bill of Exceptions, either settled or sealed, where this point is made;

same day with the resolution, and is never afterwards mentioned in the journals. The apprehension of Lord Danby was a breach of privilege, because there was no information on oath to ground it. If there had, as the warrant purported to be for *treasonable practices*, will the Considerer say, that the apprehension would have been a breach of privilege, when a member may be apprehended even for a libel? It is amazing, that a subtle man, as this exotic writer certainly is (tho' no great lawyer) should offer such a mere cobweb for reasoning! His friends, the ministry, would have opposed the motion as disorderly and inadmissible had it been so, and not have received, amended, and shaped it, and finally adjourned it only. And pray, how can any body determine that the resolution, damnatory of general warrants, will not be followed by an *address* to the king, to desire his majesty would direct this resolution to be communicated to the privy council and the secretaries offices, to the end, that no more such warrants may for the future be issued from thence; and by an *order* that this *address* should be presented to his majesty, by such members as are of his privy council. The resolution would then tend to an *other act of parliamentary proceeding*, would be followed by a *directory vote*, and by an *order* which is the *final and executive act of the House*; so that the Considerer's rules, or clerk-like formalities, may be easily complied with in the present case, if any man can *really* think they will add ought to the weight or propriety of the resolution itself. But, if he should farther insist, That the resolution must likewise arise from some other parliamentary proceeding, it being impossible to connect it now with any thing that passed the last session (albeit the question was only adjourned then,) especially as the complaint against Mr. Webb and Mr. Wood, is totally discharged: I can tell him that, in my apprehension, it is not too late to move a complaint against the secretary himself, which perhaps, would have been at first the most becoming the dignity of a house of parliament, and the most constitutional (altho' not the most respectful, complaisant or tender) way of proceeding; and therefore, it is worthy the consideration of administration, whether the simple, independent resolution, should it be moved again, will not, every thing considered, be for themselves, the most eligible of all. The exotick compiler of the metaphysical *considerations* need be under no concern about its regularity. It will be perfectly so. Otherwise, let me ask him, how That momentous resolution touching an *English* parliament's right of taxing the colonies could be justified? It was an independant, substantive resolution, followed by nothing; and yet was a resolution not only of extreme magnitude, but of the most general and highest legal nature, involving in it a decision of the first and most fundamental principles of liberty, property, and government, and well worthy also, as to the temporary policy of it, the most serious of all consideration. This was resolved too, if I am informed right, at the close of the night and at the rising of the house: so that every body must have taken it as a clear thing, that they could at any time come to a resolution upon any general point of law, whenever they should see it expedient so to do. *Sed verbum sapienti sat est.*

nay farther, there is no Bill of Exceptions or Cause, now in agitation, where this point can be made: seeing, in the first place, it must be shewn that the Secretary of State is a Justice of Peace within the meaning of the Statute; and next, that there was a probable cause for arresting Mr. *Leach*, &c. before the legality of the warrant itself can at all come in question, or be material. Let the frame of the warrant have been ever so legal, unless the person who issued it was a Justice of Peace within the words of the act of Parliament, and unless there was also a probable cause for apprehending Mr. *Leach*, &c. the persons who executed the Warrant are not justifiable, any more than the Secretary who issued it. Now, there is not the least colour in *law* for maintaining that any man as Secretary of State is a statutable Justice of Peace, nor the shadow of a *fact* to prove Mr. *Leach*, &c. to be the Author, Printer, or Publisher, of No. 45, nay the Jury found the contrary; and yet not one, but both of these matters, must be fully established, before the warrant itself can come under consideration. For, I cannot believe, until I see it actually come to pass, that any Court, out of complaisance to any advocate, will invert the order of things, and consider that point first which is last in course, and which can only operate at all in favour of the Defendants, after the former have been established. A hardy assertion to the contrary gains no credit, when it stares Common Sense in the face; nor has it any other effect than that of turning ones eyes with astonishment and indignation upon the desperate assertor. It is, I allow, commonly said, that *if Truth be against a Man, he will be against Truth*; but then there should be something in the way of saying that will put a gloss upon the matter, in order to obtain a momentary credit to it. Above all such

crazy

crazy stuff should never be committed to paper; the botchery will be presently seen through, and the unskilful tinker damned. However, I will further venture to affirm, with respect to the legality of the warrant, that no *English* lawyer thinks the *point of magnitude* for its difficulty, requiring learned discussion, or *mature consideration*: altho' many a man might be of opinion, when the liberty and property of a representative of the community were broken in upon by a minister of the Throne, Parliament would interfere, that the privileges of the Legislature might be vindicated with dignity, that is, by the Legislature itself; the private remedy of action or indictment being too small for some cases, and the ordinary Courts of Justice too feeble to cope with some malefactors.

The *Considerer* may misrepresent and then condemn, if he pleases, my way of Reasoning about the Seizure of Papers, let him but agree with me in the Law upon that head. I write not for the sake of Abuse or Altercation, but of the just liberties of Englishmen. I desire to offend no man, who does not counteract or betray them, and I care not whom I offend that does, or attempts to do, either. In the reign of Charles the First, the Commons resolved, " That the Searching and
 " Sealing of the Chambers, Studies, and Papers,
 " of Mr. Holles, Mr. Selden, and Sir John Elliot,
 " being Members of Parliament, and issuing out
 " Warrants for that purpose, are Breaches of Privilege:" And also, " That Mr. Laurence
 " Whittacre, being a Member of the Parliament,
 " quarto Caroli, and entring into the Chamber of
 " Sir John Elliot, being likewise a Member of that
 " Parliament, Searching of his Trunk and Papers,
 " and Sealing of them, is guilty of a Breach of
 " Privilege of Parliament, this being done before
 " the Dissolution of the Parliament."

The

The *Considerer* indeed says, " he cannot form
 " to his imagination any legal or political reason,
 " even in high treason or other public danger,
 " for the general and undistinguishing seizure of
 " papers."

This carries a very handsome appearance with it. But then, in page 13, he asserts that " the
 " prosecutor is at liberty to avail himself of what-
 " ever he can find in the house or on the person,
 " to prove the truth of his charge." Now, How
 is this consistent with the foregoing or founded in
 notions of law? For, without information on oath
 affecting particular things, nothing can in any
 case be touched or examined, much less seized
 and carried off. Let the contrary be admitted;
 and whenever an Attorney General shall think fit
 to file an information, or a Secretary of State to
 take up any man, be it ever so groundlessly, his
 house and all his papers may be rummaged and
 gutted by this sort of law, that is, upon mere
 political suspicion, in order either to fish for evi-
 dence really to prove him a libeller, or else for the
 sake of other intelligence which a jealous minister
 may want or wish for and not know otherwise how
 to come at. Every private paper, according to
 this doctrine, might be scrutinized by the ex-
 aminer; for, without doing so, how could he
 determine whether something could not be proved
 from thence? And yet, no information all this
 while on oath might be given either to Mr. Attor-
 ney or Mr. Secretary. In a word, once admit the
 principle, and all the consequences of an unlimited
 State Inquisition follow of necessity. But, it is really
 absurd to suppose This can be law, when nothing
 can be taken from any man, in a legal way, with-
 out some specific criminal charge against it founded
 on oath, or on the view of the magistrate or ap-
 prehender accompanying the criminal fact.

He

He then proceeds very fillily to suppose that evidence will not be admissibile, if got by violence, and asks a foolish question upon this strange supposition. But *quod fieri non debet, factum valet*, an unlawful manner of coming by papers will not prevent their being evidence when produced. The only thing that is plain from this raw writer is, that he himself has no certain notion about the matter at all.

He allows that when a Jury finds a man guilty of murder or a libel, they pronounce him guilty of *that fact which the law calls a murder or a libel*, and says that *beyond those bounds the Jury have nothing to do with the law*. This is enough for my present purpose, and therefore it is not necessary for me to scan the whole of his law-doctrine, however exceptionable it may be, concerning Jurors; altho' the old books most certainly say the Jury are judges of the law, as well as the fact, in all cases, *if they please to take it upon themselves*. *Lilburn*, it is very well known, immediately after his acquittal, published his trial, and in a remarkable frontispiece prefixed to it, proclaimed to the world that he had been acquitted by the integrity of his jury *who were judges of the law as well as the fact*. It perfectly amazes me that the *Considerer* should work himself up to affirming, *it is contrary to their oath*, when any man need but read it to see there is not the semblance of a foundation for so scandalous and wanton an assertion. Indeed, his conceptions in general of juries seem by much too lowly and contemptuous, owing I presume to his education on the northern side of the *Tweed*, where very little use is made of them, the law of the country servilely treading after that of Imperial *Rome* which was calculated for empire and vassalage, and not for freemen or a commonwealth. A like prejudice has drawn some other people into many
a scrape

a scrape which but for this I fancy they would not have fallen into.

In strictness, the Law of *England* in a judicial way knows no other *proof* but before a Jury and by record.

If a man, for example, conceives himself alluded to in any defamatory writing, altho' not named nor personally described, especially where the character he imputes to himself is supposed of some future age, He must take the sense of a Jury upon it. A Judge cannot determine the matter; it is not within his power, it is no part of his province, to ascertain an innuendo: nor can the party himself be examined, for nobody is required by our laws to furnish evidence against himself. In short, as no Starchamber exists at present, so nobody can be punished upon the mere presumption of the King's Judges; nor can a discovery be forced from the party by any torture of examination or confession. Twelve indifferent men, his fellows, must find on their oaths that the writing complained of was knowingly and maliciously put forth by the accused in contempt and disparagement of the Accuser. This is the only legal proof in such case, whereon any judgment can be founded.

So nice were our ancestors, after the Revolution, even with respect to innuendos confirmed by the verdict of a jury, that the Lords in reversing the judgment against Sir *Samuel Bernardiston*, declared "The information, being grounded upon
" *Letters*, which in themselves were not material,
" but made so by innuendos or supposed or forced
" constructions, ought not to be allowed; for,
" all accusations should be plain, and the crimes
" ascertained."

In good faith, no *Englishman* should be construed or innuendoed into a fine or a jail even by a Jury, much less by a Judge without any trial
whatever

whatever by his peers. Who is meant or what is meant by any writer is in every case to be resolved by his Country. No affidavits will serve the purpose. And, whenever a contrary doctrine shall take place, the Constitution of this country will soon be destroyed and the liberty of every man in it lie at the mercy of his Majesty's Judges. Is this what any man desires or will yet a while endure? It will not only be over with the true English Constitution; but a man may boldly say *actum est de republica*. Perchance too, *Chaos will not come again*, for I am afraid of a much worse thing, and that is lifeless slavery. The time will then exist which the modern *British* Historian only feigns of our generous Ancestors, when parliaments will be considered as an *ornament* and not as *essential* to the State, and no lawyer have even an idea of Liberty; for, according to him, the exuberant happiness of Englishmen under the first *Stuart*, made them, first rich and wanton, and that wantonness gave rise to extravagant notions, and these at length, by jumbling incessantly together, fell casually into the shape of political freedom, and thus in the golden reign of this Scottish Solomon, the notion of an *English* constitution was somehow conceived, produced or made.

Not only the reason of the thing, but history, warrants me in foreboding this consequence from such tenets. In the days of our second Scottish prince, Charles the martyr, when our old *Magna Charta* liberty was ebbing very fast, and this antient constitution verging to an end, the Starchamber lifted its crest higher than ever, and superseded the use of Juries and all other Judicatories. The *second day of Hilary Term, 1637*, an Information was preferred in the Starchamber by the King's Attorney-General against *Lilburn* and *Warton*, for
C the

the unlawful printing, publishing and dispersing of libellous and seditious books, contrary to the decree of that Court, which was verified by *Affidavit*. They were brought up to the *Office*, but refused to take an oath to answer *interrogatories*, saying it was the oath *ex officio*, and that no free-born *Englishman* ought to take it, not being bound by the law to accuse himself. Their Lordships nevertheless ordered, “ the oath to be tendered again, and again, in open court, and the delinquents still refusing it, and to be examined, adjudged them to be guilty of a very high *contempt* and offence of dangerous consequence and evil example, and worthy to undergo very sharp, severe and exemplary censure, which might deter others from the like presumptuous boldness in refusing to take a legal oath, without which many great and exorbitant offences, to the prejudice and danger of *his Majesty*, his kingdoms and loving subjects, might go away undiscovered and unpunished; and therefore ordered them to be *committed* to the Fleet *untill they should conform*, and to pay 500*l.* apiece, and before their enlargement to become *bound with good sureties for their good behaviour*; that *Lilburn* should be whipt through the streets from the Fleet to the Pillory, and from thence be returned to the Fleet, there to remain according to this decree.” In April, *Easter Term*, this sentence was rigorously executed. But *Lilburn*, whilst he was whipt at the cart and stood in the Pillory, spoke irreverently and tossed about pamphlets. The Starchamber, then sitting, being informed of this, immediately ordered him to be gagged, and made a further order “ that he should be laid alone with irons on his hands and legs, in the wards of the Fleet where the basest and meanest sort of prisoners are used to be put, and that *the warden* of the Fleet *should* take especial care to *hinder the resort of any person* what-

whatsoever to him, and particularly that he should not be supplied with any hand, and to take special notice of all letters, writings and books brought unto him, and to seize them, and to take notice from time to time who they be that resort to the said prison to visit the said Lilburn or to speak with him, and to inform the board. Their Lordships further ordered “ that the Attorney and Solicitor General should strictly examine *Lilburn* whether he did, during the time of his whipping and standing in the Pillory, utter any, and what speeches *tending to sedition or to the dishonour of the said Court of Star Chamber or any member of the said Court*, and who heard them; and whether he threw about any and what seditious books and pamphlets, and of whom he had them; and what other material circumstances they shall think fit to examine upon, for better finding out the truth, and thereof to make certificate with their opinions.” *Lilburn* in consequence of this, continued in prison till Nov^r. 1640, when the first parliament begun, and then he was released. And upon the transmission of the case from the Commons with the Star Chamber sentence, the House of Peers, after an examination of the whole proceedings and a due consideration of the sentence, adjudged “ that the same and all proceedings thereon should forthwith be vacated, obliterated and taken off the file, *as illegal and most unjust, against the liberty of the subject and the law of the land and Magna Charta, and unfit to remain upon record.*”

To all the Considerer says, with respect to Juries, it is a sufficient Answer, that, Whether any Paper be a *Libel tending to, &c. against the Peace*, if at all a matter of law, it is that sort of matter of law which is *necessarily blended with fact*, and therefore, according to him, is the proper province of a jury. And altho’ he represents the people likely

to be equally partial with the court, I do not conceive where or how that can happen, unless a court should at any time discontent or act against the whole people, and that is a case I cannot suppose. The contest, in a public libel, lies between the ministry and some particular people; therefore, the jury, unless taken from among those very people (which cannot be) may be very impartial, altho' the court cannot be so. After saying this, I shall leave the Considerer the uninterrupted satisfaction of asserting *Truth* to be a crime in a public libel, and of insinuating, that it is better the writer should be punished on that account, than the person truly charged by him be exposed, altho' he were even guilty of a capital crime. Let him, if he will, lay down this to be good law in a *criminal* prosecution, but not to be so in a *civil* action, against a supposed libeller. Indeed, in a note on this part of his performance, he declares a libel to be a crime upon this principle, that "whatever carries a present injury to the peace of another, does so to the peace of the state;" so that, by this way of reasoning, whatever breaks the peace of mind of any old woman is a breach of the public peace of the kingdom. But this enthymem reverses the rule of logic,

Syllogizari non est ex particulari,

or as a Christ Church-man would say, *ex aliquo non sequitur omne*. The position, in reality, is new and so extensive, that let any man have a hand in detecting the conduct of a political knave, and by virtue of it, he will be amenable to a *criminal* court for such his proceeding, as if it were really a malversation. The Considerer says very truly (I believe) "this principle seems at first to have taken place with a view to bring libels to the jurisdiction

"tion of the Starchamber;" but, I hope, he would not, from his particular approbation of it, or out of reverence to that abolished court, advise or endeavour the introduction of it into the *King's Bench*. I am obliged to him, however, in the same place, for admitting that the principle on which judges and legal writers hold a libel to be *criminal, is its tendency to a breach of the peace*; because, what only tends to, cannot be itself, a breach of the peace, as the thing tending to cannot be one and the same with the thing tended to; and consequently such tendency cannot by any possibility be an *actual* breach of the peace. Having said this, I will now take my farewell of my flimsy antagonist, and hope another time he will be convinced that plain fact and common sense, are not to be overcome by metaphysical quiddities and unsubstantial forms. The present argument, let me assure him, is above his encounter, and he will do well upon a future occasion, as well as his abettors, to

————— remember *Milos* end,
Wedg'd in that timber which he strove to rend.

Jan. 24, 1765.

F I N I S.

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On Saturday the First of June will be published, Price 1s.
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ALTHOUGH the following ADDITIONS (made at different times to the *Letter on Libels, &c.*) were printed with the former Edition of the *Postscript*, yet as there is reason to believe several Gentlemen who bought the *Second* or *Third* Editions of the Letter, have not had these Additions, they are again reprinted; in order that they may still have an Opportunity of making their Copies as complete as if they were to buy the Book now.

ADDITIONS

TO THE

SECOND EDITION,

TO WHICH

All the Pages mentioned refer.

In page 6, after the second paragraph, read the following:

A KING of England may be considered in two respects, either in a public or private capacity. In the latter he may, as a man, indulge his own humour, in the establishment of his household and the choice of his immediate servants. But in the former, he is wholly a creature of polity; his crown, his power, and his revenue are derived from and circumscribed by act of parliament. He is indeed the first in rank of the three independent parts of the legislature, and the executive hand of the whole; but the ministers and officers by which he carries on the government are the servants of the community, and the public weal is the sole object of the entire political frame. In order, however, to preserve a proper respect and chastity of Idea with regard to the crowned head, the royal name is never to be introduced into any question of public transactions. And therefore it is established as a maxim *The King can do no wrong, &c.*

In page 7, instead of the lines from 12 to 18, read the following:

In process of time, misdemeanors came to be prosecuted by an information filed by the King's coroner or Attorney, that is, the master of the crown office; and this was considered as the presentment of the King, &c.

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At the bottom of page 8, adds as follows :

An information has been frequently filed, and the miserable object of it awed into giving security for his future behaviour, without any legal ground for either, or serious design of prosecution ; and in this ignominious state of apprehension and bondage has he been kept for years together, without either being ever withdrawn.

In page 11, line 26, after the word Thought, add the following :

“ Whether any act was done or any word spoken, “ in such or such a manner, or with such or such an “ intent, the Jurors are Judges. The Court is not “ Judge of these matters which are evidence to prove or “ disprove the thing in issue.” This is our law, both in civil and criminal trials, altho’ the latter are by far the most material, because what affects our person, liberty or life is of more consequence than what merely affects our property.

In page 12, between the first and second paragraphs, put the following :

The statutes against Slander and Scandalum magnatum, (namely the 3d Ed. I. 2d and 12th Ric. II.) direct only that he who “ shall be so hardy to tell or publish any false “ news or tales, whereby discord or slander may grow “ between the king and his people, or the great men of “ the realm, shall be taken and kept in prison until he “ has brought *him* into the court *which was the first author* “ of the tale.”

Instead of the two last lines in page 23, and the first 12 in page 24, read the following :

Any motive of public concern ; and some of his reasons against it, indifferent men thought the strongest in its behalf, namely the delineation of our boundary in North America, which, altho’ the course of a great river is made to describe, he objected to, because its extremely distant *source* could neither be ascertained or denominated. His discourse, it was remarked, favoured more of a draughtsman arguing exceptions, than of a statesman discussing a treaty. And nothing perhaps like

like it can be recollected, saving one equivocal speech of a similar texture, delivered in another place, but at the same time and upon the same occasion; where the arguments were so artificial, qualified and verbal, without edge or substance, that it would be extremely difficult to put into clear and distinct propositions, what was either affirmed or denied touching any of the articles themselves. Indeed, I could never determine whether he had, or had not, a good conception of our foreign interests, altho' I am persuaded he had a thorough one of all the domestic connections among us. I might add, that when a bill for a militia was presented, altho' he liked the name and speciously commended the design, yet he foresaw great difficulties and infinite danger in it, recalled to mens minds the public evils that followed from arms being put into the hands of the people, no less than the destruction of royalty and the suppression of peerage; and so found innumerable objections, both religious and political, to the form and the substance of the several clauses, and to all the regulations proposed. The tide, however running for the measure, both as a national strength and a counterpoise to a standing army, he suggested several enervating amendments, to reduce the number proposed one half, and to have the other either officered wholly by the crown, or else unofficered at all, as a mere fund in the hands of the King, for the better supply of his standing army. The number was accordingly curtailed, and other qualifications took place. But, at last, when the bill became an act, things were so managed in his particular county, that the militia was never either embodied, or commuted for in money, in spite of the alternative laws for the purpose. He was apparently a principal man, &c.

At the end of the first paragraph in page 31, add the following:

The notion of pursuing a libeller in a *criminal* way at all, is alien from the nature of a free constitution. Our ancient common law knew of none but a *civil* remedy, by special action on the case for damages incurred, to be assessed by a jury of his fellows. Indeed, the doctrine in courts of law used to be, that, "no writing what-ever is to be esteemed a libel, unless it reflect upon some

“ particular person.” There was no such thing as a public libel known to the law. In order, however, to gratify some of the great men, in the weak reign of Richard the 2d, some acts of parliament were passed to give actions for false tales, news, and slander of peers or certain great officers of state, which are now termed *de scandalis magnatum*. Before that time, or at most the 3 Edward I. no mere words were actionable, unless some special damage thereby was alleged and proved. Even now-a-days the courts of common law will not sustain actions for mere obscene discourses, by word of mouth or writing, or for ribaldry. They leave such spiritual concerns to the ecclesiastical censures of courts-christian.

And it is very notorious from history, that the most sanctified and pharasaical ministries and reigns, when the church has been sounded the most, have been the most corrupt and slavish.

The whole doctrine of libels, and the criminal mode of prosecuting them by information, grew with that accursed court the star-chamber. All the learning intruded upon us *de libellis famosis* was borrowed at once, or rather translated, from that slavish imperial law, usually denominated the civil law. You find nothing of it in our books higher than the time of Q. Elizabeth and Sir Edward Coke.

After the paragraph, page 32, ending with any legislature, read the following large addition :

In speaking of sureties, I have not entered into the difference between those for the *peace*, and for the *good behaviour*; but the latter are certainly by much the most to be dreaded. For “ surety of the peace cannot be broken “ without some *act*, as an affray or battery, or the like. “ Whereas (according to my Lord Coke) surety *de bona gestu*, or good abearing, consists chiefly in that a man “ demean himself well in his port and company, doing “ nothing that may be *cause* of the breach of the peace, “ or of putting the people in fear or trouble.” In short, it affords more room for a latitude of construction, or for a Judge’s discretion, which is very apt to operate against the subject, and should therefore be studiously avoided.

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The truth is, at common law, surety for the good behaviour could be demanded in no case before conviction by a jury. Binding to the good behaviour was a discretionary judgment, given by a court of record, for an offence at the suit of the King, after a verdict; trial by his peers being an Englishman's birth-right in all charges, not to be taken away but by act of parliament.

“Originally, wardens or conservators of the peace, were
 “wont to be elected in the full county before the sheriff;
 “they had only co-ertion or prehension in a few cases, and
 “no jurisdiction in any cause.

“But, when young Edward the 3d, by the means of
 “his mother and Sir Roger Mortimer, had forcibly got
 “possession of his father's crown, He instituted keepers,
 “commissioners, or justices of the peace, as so many
 “special eyes and watches over the common people,
 “whereby the election of conservators of the peace was
 “taken from the people, and translated to the assignment
 “of the King. These justices were not ordained how-
 “ever, to reduce the people to an universal unanimity, but
 “to suppress injurious force and violence against the per-
 “son, his goods or possessions. In this matter of the
 “peace (continues Mr. Lambard) the law of God re-
 “spect the mind and conscience, the laws of men do
 “look but to the body, hands and weapons: and there-
 “fore, furious gesture and beastly force of body (and not
 “every contention, suit and disagreement of minds) is
 “the proper subject about which the office of the justices
 “of the peace is to be exercised.”

Before the 2d of Edward 3, justices could only report to the parliament; but, by that statute, they had power to punish disobeyers, and resisters. And the 34th of the same King enacts, “that in every county shall be as-
 “signed for the keeping of the peace one Lord, and with
 “him three or four of the most worthy in the county,
 “with some learned in the law, and they shall have power
 “to *restrain misfeasors*, rioters, and all other barrators,
 “and to pursue, arrest, take and chastise them, accord-
 “ing to their trespass and offence; and to cause them
 “to be imprisoned and duly punished, according to the
 “law and customs of the realm; and also to inform of
 “them; and to inquire of all those that have been pil-
 “lors and robbers in the parts beyond the sea, and be
 “now

“ now come again, and go wandring, and will not
 “ labor as they were wont; and to take and arrest all
 “ those that they may find by indictment, or by suspicion,
 “ and to put them in prison; and to take *of all them*
 “ *that be not of good fame*, where they shall be found,
 “ *sufficient surety and mainprize of their good behaviour*
 “ towards the King and his people, and the other duly
 “ to punish, *to the intent* that the people be not by *such*
 “ *rioters or rebels*, troubled nor endamaged, nor the peace
 “ blemished, *nor merchants nor others passing by the high-*
 “ *ways* disturbed, nor put in the *peril* which may hap-
 “ pen of *such* offenders.” Now, it is plain, this statute
 regards nothing but actual offenders, rioters, barrators,
 rebels and highwaymen: and surety for the behaviour can-
 not be taken thereby, but of those who are on strong
 ground suspected of some such actual breach of the peace.
 This law, nevertheless, is the origin and the sole foundation
 for the present demand of sureties for the good behaviour
 before conviction; and what is not warranted by the
 provisions of this act, is illegal and unwarrantable, the
 common law permitting no such thing, and the same be-
 ing in itself derogatory of the rights of a freeman.

Indeed, some particular statutes in subsequent reigns,
 have directed surety for the good Abearing in cases
 therein specified; as the 1st Mary, for disturbing a
 preacher, or irreverent handling the sacrament, altar, or
 crucifix; the 5th Eliz. for taking of fish in ponds, or deer
 in parks; the 23d Eliz. for absenting for twelve months
 from church; the 39th Eliz. for disturbing the execution
 of that statute, either for the punishment of rogues, or for
 the relief or setting on work of the poor; and the 3d
 James, for unlawfully hunting and stealing deer or conies,
 &c. But, these special statutes are out of the present
 question, and therefore need not be touched upon here.

To return then to the 34th Ed. 3. It appears (I think)
 uncontrovertibly from the penning of that statute, as
 well as from the acceptation of it among our ancestors,
 and the construction of antient lawyers, that security for
 good behaviour cannot be required, but where a man shews
 just cause to apprehend some bodily hurt to be done to him-
 self. And in such case, the peace-magistrate must con-
 vene the person charged, *inquire* and *find* him not to be
 of good fame where taken. He must examine into the
 truth

truth of the matter alledged, try and adjudge it upon satisfactory testimony or evidence of the thing, unless he saw it with his own eyes, before he can legally demand any surety for good abearing, or know what to take: for, he acts judicially. In short, mainprize for the behaviour, (whether by bond to the King, pledge or caution) must be by a regular proceeding of record. In fact, none but a judge of record (which a justice of peace is) can take a recognizance, because the acknowledgement of the sum is to remain as a matter of record. Every recognizance for the peace is expressly directed by the 3d Henry 7, to be certified to the next sessions. And, before the reign of James I, it was not imagined that security for the behaviour could be taken by one justice, and all the books in his time recommend two. Nay, binding to the behaviour, used always to be done in open sessions; and the best opinions now are, that a justice acts illegally, if he bind any man to his behaviour for any longer time than untill the next sessions of the peace. My Lord Hale says, "This binding, tho' expressed generally, and without any time limited, is not intended to be perpetual, but in nature of bail, viz. to appear at such a day at the sessions, and *in the mean time* to be of good behaviour."

Indeed, by supplicavit from the Chancery or King's Bench, a justice may be commanded to take surety for the good abearing, of any particular person; and then in obedience to the writ he must do so, for he acts only ministerially. The supreme courts, however, are commanded by "the 21st James I, to grant no process of the peace for good behaviour, but upon motion in open court, and declaration in writing and upon oath, to be exhibited by the party desiring such process, of the causes for which such process shall be granted; the motion and declaration to be mentioned on the back of the writ; and if it shall afterwards appear that the causes are untrue, the court may order *costs to the party* *grieved*, and commit the offender till paid." This act is professedly by its preamble made to prevent surety for the behaviour being unjustly "procured upon oaths peremptorily and corruptly taken and upon false suggestions and surmises," which shews that it is only to be awarded after a solemn examination into the truth of the cause

cause suggested, upon strong and satisfactory evidence in open court, in the face of mankind.

What then must one think of any court of justice that shall, upon the caption of a man as a libeller, refuse to let him to bail before he has entered likewise into recognizance for his behaviour, and even that without limit of time? An aspiring Attorney-general, at the instigation of a peevish and suspicious minister, may charge any paper as a libel, and any man as the author or publisher, *ex officio*, without oath or the shadow of legal proof! The information may be filed, process taken out and executed, and the supposed libeller obliged to become bound in a heavy sum for his good behaviour, without stint of time; and yet the information may never be tried, or withdrawn, nor the recognizance released! Nay, if the same person should afterwards be guilty of any petty constructive misdemeanor or breach of the peace, it might be pretended that he had forfeited his former heavy recognizance; so that he would be punished, not in proportion to his real transgression, but to one that was only supposed: and This in a country where the law presumes every man to be innocent until he be found guilty! In plain words, it is a libel on the constitution to hold such doctrine, and in a judge, a breach of his trust (not to say high treason) to support it. It would render every English subject, by possibility, a most miserable fettered slave. Mr. Selden knew well the contrary, and therefore suffered himself to be reimprisoned rather than submit to so lawless a demand of the crown, as that of surety for his behaviour, and thus in his own person to afford a precedent or sanction for what might afterwards be attempted against others of his fellow-subjects. He was a great lawyer and a true representative of the people in parliament, in opposition to the tyrannical procedure of an arbitrary court and its subservient judges, that would have held every man *in misericordia regis*, if they could.

Having seen what the words of the statute, creating this power are; let us now look at the commission for the peace framed in consequence of it: premising that no usage, royal proclamation, or exposition of a judge, will make law in this case, that is not warranted by the express words of the statute; and that the same being a penal statute it must be construed strictly.

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The clause in the old commission of justices of the peace, authorizing them to take surety of the peace or good behaviour, confines the same to actual breaches of the peace, that is, threats of bodily injury, or the burning of their habitations, and is in these words, “ ad omnes
 “ illos qui alicui de populo nostro de *corporibus suis*, vel
 “ de *incendio domorum* suarum *minas fecerint*, ad suffi-
 “ cientem securitatem de pace vel de bono gestu, erga
 “ nos & populum nostrum, *inveniendam*, &c.” And the words settled in James the 1st’s time and now pursued, are, “ To keep, and cause to be kept, all ordinances and
 “ statutes for the good of the peace, &c. and to chastise
 “ and punish all persons that offend, according to the form
 “ of those statutes and ordinances ; and to cause to come
 “ before you all those, who to any of our people *con-*
 “ *cerning their bodies*, or the *firing of their houses*, have
 “ *used threats*, to find sufficient security for the peace or
 “ their good behaviour, towards us and our people ; and,
 “ if they shall refuse to find such security, then them in
 “ our prisons until they shall find such security to cause to
 “ be *safely kept*. We have also assigned you to *inquire*
 “ *the truth more fully* by the oath of good and lawful men,
 “ &c. of all those in companies against our peace,
 “ in disturbance of our people, have gone or rode, or
 “ hereafter shall presume to go or ride ; and also of all
 “ those who have there lain in wait, or hereafter shall
 “ presume to lie in wait, to maim or cut or kill our
 “ people.”

Now, this commission is grounded evidently on the statute of Edward the 3d, derives its force from it, and needs no comment to apply thereto the several parts of it. It confirms abundantly the doctrine I have advanced. Indeed, the legality of requiring surety of good behaviour for Arson, seems very questionable, as not comprised within the act. However, nobody will object to it, as being a security against being burnt in one’s bed, by any man who shall threaten, or, by lurking about the house at night, shall indicate an intention of so doing. It is most certain, nevertheless, that surety for the peace or the behaviour could be demanded in no case whatever at common law, before conviction, that it springs wholly from statute law within time of memory, and that the statute authorizes it only in cases of real personal danger ; where-

fore it may very well be doubted upon what legal bottom it can be extended farther. In the reign of Edward the 4th, it was determined, that it ought not to be granted to a man who shall demand it because he is in fear that another will take and imprison him ; by reason that he may have a writ de homine replegiando, or an action of false imprisonment whereby he may be repaired in damages. This may be too strict a construction. But it is a proof that our ancestors thought the statute ought to be strictly construed, and that surety of the behaviour was only to be had as a protection from bodily maiming or destruction, indicated and proved by threats of immediate injury, by the wear of dangerous and forbidden arms, or by wandering and lurking about highways, and other suspicious places, in a suspected manner. It has been resolved that this security cannot be demanded for fear of harm to servants, cattle, or goods ; altho' a servant may demand it for himself in his own person like any other man : and it is never to be awarded by any magistrate but upon credible oath, or upon his own view, of a sufficient cause. My Lord Coke says expressly, that " slanderous words are not " a breach of the behaviour, for tho' such words are " motives and *mediate* provocations for breach of the " peace, yet tend they not *immediately* to a breach of the " peace, like a challenge, &c." Many strange discretionary deviations, however, from the words of the statute, have been made and upheld with forced constructions by judges, in the flux of time ; untill, in the latter end of James the 1st's reign, it came to be asserted by Mr. Dalton, in his book, that surety for the behaviour could be demanded of libellers. I presume, however, he must mean for such a libel on some particular person as directly and immediately tends to provoke him to fight ; for, I believe, it has been reserved to our day, and to the complement of crown-law by Serjeant Hawkins, to have it maintained either in print or at the bar, that such surety can be required for any public libel, or for a libel on any particular person not directly tending to an immediate breach of the peace. Be this as it may, the position is not warranted by any act of parliament, and is therefore absolutely illegal.

It has been resolved " That sedition cannot be committed by words, but by public and violent action."

" And

And my Lord Coke himself (the introducer, fosterer, maturer and reporter of the present star-chamber doctrine about libels) relates “ that in the 30th of Q. Elizabeth, “ one King with sureties was bound by recognizance to “ appear at the *next sessions* and *in the mean time* to be “ of the good behaviour. That he appeared and was *indicted* for slanderous words spoken,” *since his binding*, to a squire, namely, *Thou art a pelter, a liar, and has told my Lord stories, and for breaking and entering the squire’s close and chasing and vexing his cattle, and for calling him afterwards a drunken knave.* That the indictment was removed afterwards into the King’s-Bench, and there it was debated divers times both at the bar and the bench; whether, admitting all that is contained in the indictment to be true, any thing therein was in judgment of law a breach of the said recognizance. And that it was resolved “ neither any of the words, nor the trespass were any “ breach of the good behaviour, for that none of them “ did tend immediately to the breach of the peace, for “ tho’ the words *liar and drunken knave* are provocations, “ yet tend they not immediately to the breach of the “ peace, as if King had challenged the squire to fight “ with him, or had threatened to beat or wound him, “ or the like, for these tend immediately to the breach “ of the peace, to a trespass on the person, and therefore are breaches of the recognizance of the good behaviour.”

“ Surety of the peace also (according to some great “ authorities) is not to be granted, but where there is a “ fear of some present, or future danger, and not merely “ for a trespass or battery, or any breach of the peace “ that is *past*; for, this sort of surety is only for the security of such as are *in fear*.”

Dr. Burn, after giving a succinct and clear history of the several extensions of the sense of the statute, case after case, and reign after reign, with striking propriety remarks, that “ one great inlet, to the larger and at length almost “ unlimited interpretation of the words, was an adjudication in Henry the Seventh’s time, That it was lawful “ to arrest a man for the good behaviour, for haunting a “ suspected bawdy-house, with women of *bad fame*,” and concludes with the following judicious reflections: “ Thus the sense of this statute has been extended, not

“ only to offences immediately relating to the peace, but
 “ to divers misbehaviour not directly tending to a breach
 “ of the peace; insomuch, as it is become difficult to
 “ define how far it shall extend, and where it shall stop.
 “ Therefore, the natural and received sense of any statute
 “ ought not to be departed from without extreme neces-
 “ sity; for, one concession will make way for another,
 “ and the latter will plead for the same right of admission
 “ as the former.”

Let the legislature interpose therefore, when they shall
 think fit, and see the public safety requires it; but, I hope,
 no crown Judge will ever presume, for the future, to do
 more than *jus dicere*, and not *jus dare*. Every day makes
 one more sensible of the wisdom of *Aristotle's* counsel in
 making laws “ *Quoad ejus fieri possit, quamplurima legibus*
 “ *ipsis definiantur, quam paucissima judicis arbitrio relin-*
 “ *quantur.*” If Judges are not bound fast with chains
 of laws, customs, ordinances and statutes, it is impossible
 to divine what a servile Chief Justice may not one day give
 out for law, to gratify the spleen of an anxious, conscience-
 stung, and detected minister*. And such a horror have
 I, particularly, of the introduction of any new criminal
 law into this country, that, were it to happen, rather
 than submit thereto, I should be even for accompanying a
 noble Law-lord to *Ultima Thule*, which, by the shiver
 he spoke it with, I guess must be Scotland, the very
 northern scrag or bleakest barebone of the island. A man
 would fly any where in such case.

*At the end of the first paragraph in page 37, add the
 following :*

And “ it would be (as Hawkins says) extremely hard,
 “ to leave it to the discretion of a common officer to arrest
 “ what persons, and search what houses he thinks fit:
 “ and if a Justice cannot legally grant a blank warrant for
 “ the arrest of a single person, leaving it to the party to
 “ fill it up, surely he cannot grant such a general war-
 “ rant, which might have the effect of an hundred blank
 “ warrants.”

* Whoever is inclined to enter fully into this important part of the law,
Surety for the behaviour, should consult Marrow, Crompton, Lambard's
Eirenarchy, Pulton de Pace, Fitzherbert's and Burn's Justice, &c.

At the end of the second paragraph, in page 48, add the following :

L. C. J. Hale lays down these rules, as to warrants to search for stolen goods, “ (1.) They are not to be granted
 “ without oath, made before a Justice, of a felony com-
 “ mitted, and that the party complaining has probable
 “ cause to suspect they are in such a house or place, and
 “ do shew his reasons for his suspicion; and therefore a
 “ general warrant to search all suspected places is not
 “ good; nor are general warrants dormant, justifiable,
 “ nor do they give any more power to the officer or party,
 “ than what he had without them. (2.) It is fit to ex-
 “ press that search be made in the day-time. (3.) They
 “ should be directed to constables, and not to private per-
 “ sons, though the person complaining should be present,
 “ because he knows his goods. (4.) It ought to com-
 “ mand that the goods found, together with the party in
 “ whose custody they are found, be brought before some
 “ Justice of the peace.”

In page '92, line 28, after the word Law, add the following :

It would, however, be more injurious to liberty, to have any Chief Justice, contrary to the practice of his predecessors, narrow the great remedial act of Charles the 2d, to the single case of a commitment to prison, or restraint by a legal officer, for criminal or supposed criminal matter; so that if I was restrained of my liberty, without the charge of any crime, by a man not pretending any authority of law for what he did, I should be without any immediate redress, if such restraint happened in the vacation-time. As for instance, if I was taken up by a Sergeant of the Guards with a file of soldiers, on a verbal order from a Lord, Groom, or Page of the Bed-chamber, without any cause assigned, and hurried away to the Savoy, or to a ship at the Nore.

In page 95, instead of the last paragraph (of the text) and the last but one, read the following :

Or, if any Chief Justice, with a view to the introducing a spirit of arbitrary and discretionary determination in courts of law, under a specious pretence of equity, should
 from

from the seat of justice declare he desired to hear of no case that was determined above 50 years ago.

Or, if any Chief Justice should, by solemn but unnecessary givings out from the Bench, endeavour to blast the repute of Juries with mankind, by pronouncing that the trial by jury would be the very worst of all, were it not for the controuling power of judges, by the award of new trials and the reconsideration of verdicts, and that, indeed, it could never have subsisted had it not been for such controul, by reason of the want of capacity in jurors, and the changes of the times.

Or, if any Chief Justice should arrogate to himself at *Nisi Prius*, the separate provinces of Judge, Council and Jury, by cutting short the one, and imposing his own sense of things upon the other, and if, upon any occasion, a verdict contrary thereto, was persisted in to the last, should imperiously and unconstitutionally demand of the jurors their reasons for the same?



ADDITIONS

TO THE

THIRD EDITION,

TO WHICH

All the Pages mentioned refer.

In page 8, instead of the line, from 27 to 33, read the following.

THAN the common, regular information, which, by virtue of a statute passed soon after the revolution, can not now be filed, for any trespass or misdemeanor, without express order of the King's Bench, and the Informers entering into a recognizance to pay costs to the Defendant if acquitted upon the trial, or if such informer do not proceed within a year, or procure a *Noli Prosequi*. The Attorney General, however, informing *ex officio* never pays any costs: so that he may harass the peace of any man in the realm.

Instead of the last line in page 48, and the first line in page 49, read the following:

And yet, as I take it, although the Privy Council, as a board, have constantly exercised this power, no single Privy Counsellor, nor any number of Privy Counsellors not met in Council as a Board, can pretend to such a Power. Be this as it may, the being a Privy Counsellor
or

or Secretary of State, does not make a man a Justice of Peace, and more authority or jurisdiction no Secretary ever claimed. To render him so, it has, &c.

At the bottom of page 100 add the following:

He does not wish to have his subjects address him, in the language of Divinity, as *most adorable*, or to have them vow a *whole life of devotion* to him.

